IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 96 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GANESH TEXTILES

Versus

COMMISSIONER OF INCOME TAX

Appearance:
MR R.K PATEL for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 07/09/2000

ORAL JUDGEMENT

Per Dave,J.:

At the instance of the assessee, the following questions

have been referred to this court under the provisions of section 256 (1) of the Income tax Act,1961 (hereinafter referred to as `the Act'):-

"(1) Whether on the facts and in the circumstances of the case, the tribunal was justified in confirming the penalty of Rs. 8,936/- imposed by the income tax officer u/s 271 (1) (c) of the Income tax Act, 1961?

(2) Whether the tribunal has erred in law in not taking into account all relevant facts and circumstances while adjudicating upon the aspect of 'mens rea' in penal proceedings under reference and, therefore, ultimate finding confirming the penalty is not sustainable ?

(3) Whether on the facts and in the circumstances of the case, the tribunal was further justified in relying upon and applying the judgment of the Supreme court rendered in the case of Smt. Kochammu Amma reported in 125 ITR 624 and whether the order of the tribunal is reasonable ?

The facts giving rise to the present Reference, in a nut-shell, are as under:

The assessee is a partnership firm . For the assessment year 1968-69, the assessee had shown in the return that a sum of Rs. 8,936/- was paid to Premraj Harisingh by way of interest. The assessee firm had shown that the said person Premraj Harisingh, had deposited some amount with the assessee firm and by way of interest, the said amount was paid to the said depositor.

The assessee firm had a partner named Premraj Singhvi. It was not stated in the return that Premraj Harisingh who was shown as a depositor was also one of the partners of the firm and his name as shown as a partner was Premraj Singhvi. Thus, the partner named Premraj Singhvi had deposited some amount with the assessee firm in the name of Premraj Harisingh. The return filed by the assessee firm was accepted and the assessment was framed under the provisions of section 143 (3) of the Act on 16.8.1969. Subsequently, it was revealed that Premraj Harisingh who was described as a depositor was in fact one of the partners of the firm and in the circumstances, a notice under section 148 (1) was issued to the assessee firm . In the re-assessment proceedings, it was found

that in fact Premraj Harisingh ,the person shown as a depositor, was a partner of the assessee firm and,therefore, appropriate re-assessment order was passed. It was found by the assessing officer that the assessee had concealed particulars of its income and, therefore, penalty under the provisions of section 271 (1) (c) of the Act to the tune of Rs. 8,936/- was also imposed.

Being aggrieved by imposition of penalty, the assessee had preferred an appeal before the Commissioner of Income tax (Appeals). The appeal was allowed and the amount of penalty was directed to be deleted.

Being aggrieved by the order passed in appeal, the revenue had approached the Income tax Appellate Tribunal and the Tribunal had ultimately allowed the appeal by restoring the original order passed on reassessment by the assessing officer.

In the above set of circumstances, this Reference has been made at the instance of the assessee and the court has to opine whether the Tribunal was justified in confirming penalty of Rs. 8,936/- imposed by the assessing officer under the provisions of section 271 (1) (c) of the Act.

We have heard the learned counsel. We have to examine whether the assessee had concealed particulars of its income and whether the Tribunal was justified in restoring the order whereby penalty under the provisions of section 271 (1) (c) was imposed.

The Tribunal had relied upon the judgment delivered in the case of CIT vs. Kochammu Amma , 125 ITR 624 while confirming the order imposing penalty.

Upon perusal of the orders passed by the revenue authorities, it is very clear that the assessee had not revealed the fact that Premraj Harisingh was another name of one of the partners of the assessee firm, named Premraj Singhvi. Interest paid to the partner is not allowable as per the provisions of section 40(b) of the Act. In the circumstances, the assessee ought to have revealed the fact that Premraj Harisingh, who was shown as a depositor in the books of account of the assessee firm was in fact one of the partners of the assessee and in the circumstances, the assessee ought to have shown that the amount of interest paid to so called depositor Premraj Harisingh, was in fact interest paid to the partner. By not revealing the said fact which was

absolutely relevant, the assessee can be said to have concealed particulars of its income. The said fact has been duly noticed by the Tribunal in its order. Thus, prima facie, it is clear that only with a view to avoid applicability of section 40 (b), the assessee did not reveal the fact that Premraj Harisingh, who was shown as a depositor of the assessee firm was also a partner of the assessee firm. Moreover, in our opinion, the Tribunal was justified in presuming that the assessee firm would know about various accounts maintained by its depositors with the assessee and in the circumstances, by no stretch of imagination, it can be said that the assessee firm did not know that Premraj Harisingh was one of the partners of the assessee firm who had also deposited money with the assessee.

Thus , after appreciating the facts of the case and looking to the returns which the assessee had filed in the previous years, the Tribunal came to the conclusion that there was an attempt on the part of the assessee to conceal particulars of its income and,therefore, the Tribunal had upheld the order of the assessing officer whereby penalty under section 271 (1) (c) of the Act had been imposed upon the assessee. In our opinion, the Tribunal was absolutely right in confirming the order of penalty passed by the assessing officer in the re-assessment proceedings.

We are of the view that the question with regard to concealment of particulars is a question pertaining to intention of the assessee and as the assessee had not clarified the said position, the assessee had made an effort to conceal particulars of its income and as the fact with regard to concealment of particulars of income has been finally decided by the Tribunal, we are of the view that the Tribunal was justified in confirming the order of reassessment in which the penalty was imposed upon the assessee.

All the three questions which have been referred to this court are inter-related and,therefore, we prefer to reply the same by a common answer.

The Tribunal has discussed the circumstances in which the assessee had taken undue advantage of two different names of a partner even in the earlier years. Even during the relevant assessment year, the assessing officer had accepted the return filed by the assessee believing that the assessee must have stated correct facts.But only at later point of time, the fact with regard to the concealment of particulars of income was revealed to the

revenue and, therefore, re-assessment proceedings had been initiated and the assessing officer came to the conclusion that the assessee had concealed particulars of its income and in the circumstances, penalty under the provisions of section 271 (1)(c) had been imposed. The Tribunal, in the process of deciding the appeal, had relied upon the observations made in the judgment delivered in the case of Kochamma Amma (supra). In the case on hand, the assessee had concealed particulars of its income by not revealing the fact that interest which was in fact paid to its partner was shown as interest paid to a depositor and thereby an effort was made to avoid disallowance under the provisions of section 40 (b) of the Act. On the principle discussed in the said judgment, we are of the view that the Tribunal was justified in upholding the order of reassessment passed by the assessing officer.

In the circumstances, we answer all the three questions against the assessee and in favour of the revenue. Reference thus stands disposed of, with no order as to costs.

(D. M. Dharmadhikari, C.J.)

(A. R. Dave,J.)

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